

**REMARKS**

Claims 1-18, 20-37, and 39-46 are pending in the present Application. Claims 1, 26, 45, and 46 are being amended. Support for these amendments can be found at least on page 10, lines 1-22 and FIGS. 3A-3B of the Specification, as originally filed. No new matter is being introduced by way of these amendments.

**§ 112 Rejections**

In the Office Action, claims 45 and 46 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicants respectfully request that the Office refer to FIG. 3B when reading the written description on page 10, lines 9-16. In FIG. 3B, short-term viewership data 420 is collected by a promotion agent 310 as denoted by an arrowed line from box 420 to box 310. Also, compressed long-term viewership profile 430 is transmitted to the promotion agent 310 as denoted by an arrowed line from box 430 to box 310. The promotion agent 310, from the collected short-term viewership data 420 and the transmitted compressed long-term viewership profile 430, then determines an individual watching at a particular time in box 440. Because FIG. 3B is a graphical representation of the written description on page 10, lines 9-16, Applicants respectfully submit that the written description and FIG. 3B, that is the entire specification, does describe the claimed subject matter in such a way as to reasonably convey to one skilled in the relevant art that Applicants, at the time the Application was filed, were in possession of the claimed inventions recited in claims 45 and 46.

Accordingly, Applicants respectfully submit that the rejections of claim 45 and 46 under U.S.C. 112, first paragraph, were improper and respectfully request that these rejections be withdrawn.

**§ 103 Rejections**

In the Office Action, claims 1-13, 20-32, and 39-44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Maissel *et al.* (U.S. Patent Number 6,637,090, hereinafter "Maissel") in view of Barrett *et al.* (WO 01/22731 A1, hereinafter "Barrett"); and claims 14-18

and 33-37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Maissel in view of Barrett in further view of Swix et al. (U.S. Patent Number 6,718,551, hereinafter “Swix”).

Applicants’ amended claim 26 recites in part:

matching the determined viewer behavior to a group profile to determine a class of viewer associated with the network device...the determined type of individual used to match the viewership profile with a membership criteria to generate a promotion group for distributing promotions.

Briefly, Applicants’ amended claim 26 matches viewer behavior data with group profiles provided by third parties, such as advertisers. Specification, page 10, lines 1-4. These group profiles may include age, gender, residence and other demographic data. *Id.* Subsequently, Applicants’ claimed invention uses the matched viewership behavior data and group profiles to determine the class of viewer associated with a set top box and to generate a viewership profile. Specification, page 10, lines 5-8. Applicants’ claimed invention then matches the viewership profile, which includes the class of viewer associated with a set top box, with a membership criteria provided by third parties to generate a promotion group. Specification, page 10, lines 9-22. The membership criteria, like the group profile, may be based, for example, on demographics, geographic locations of the network devices, or channel and promotion history data of the network devices. *Id.*

In this way, merely identifying the identity of an individual presently interacting with a network is not sufficient. Instead, Applicants’ claim 26, “match[es] the determined viewer behavior to a group profile to determine a class of viewer associated with the network device,” and “determin[es] a type of individual presently interacting with the network device, the determined type of individual used to match the viewership profile with a membership criteria to generate a promotion group for distributing promotions,” as recited in the above Claims Listing.

In stark contrast, the Masiessel and Barret combination asserted in the Office Action, hereinafter the “combination,” neither (i) matches viewer behavior to a group profile to determine a class of viewer associated with a network device nor (ii) determines a type of individual presently interacting with the network device to generate a promotion group for distributing promotions, element which are clearly recited in Applicants’ amended claim 26.

Differences between Applicants’ amended claim 26 and the combination are illustrated by comparing, for example, Applicants’ FIG. 3, steps 410 (match information with group

profiles) and 412 (determine class of viewer); and FIG. 4, steps 504 (match with advertiser's criteria) and 506 (determine groups to target) with the Masiessel's FIG. 5, which after determining that the end of the previous program has been reached (step 290), outputs new profile information including viewed program and viewer information (step 280) without any additional operations. There are simply no steps in Masiessel's FIG. 5 corresponding to Applicants' steps 410, 412, 504, and 506.

Moreover, the combination provides no suggestion for Applicants' amended claim 26 because the combination only: (i) uses a viewer's action at a Remote Viewer Module to select a Viewer Profile when there are multiple possible Viewer Profiles from which to select (compare Barret, page 4, claim 8 element f, "a means if only one Viewer Profile is associated with an identified and/or identifiable Remote Viewer Module" with element h, "a means wherein a plurality of Viewer Profiles may/will be associated with an identified Remote Viewer Module"); (ii) characterizes a program being watched (Maissel, column 12, lines 16-34, "current program characteristics" characterize the television program currently being viewed by the viewer); and (iii) determines preferred programs from its characterization of the program watched (Maissel, column 18, lines 7-25, "determining that programs in the program schedule whose characteristics resemble information stored in the data structure are preferred"). Simply put, the combination is only concern with characteristics of a program, not characteristics of a viewer.

Because the combination operates on the simple premise that programs with the same program characteristics as the current program characteristics stored in a viewer preference profile are preferred, while programs with different program characteristics as the current program characteristics are not preferred, there is no reason for the combination to characterize a viewer. This is clearly contrary to the recitation of Applicants' amended claim 26, "the determined type of individual used to match the viewership profile with a membership criteria to generate a promotion group for distributing promotions."

Accordingly, Applicants respectfully submit that the combination neither teaches nor provides motivation for Applicants' amended claim 26 and respectfully requests that the claim be allowed.

Independent claims 1, 45, and 46 as amended recite similar limitations as claim 26, and, as such, should be allowable for similar reasons.

Dependent claims 1-18, 20-25 depend from claim 1 and dependent claims 27-37, 39-44 depend from claim 26. These claims should be allowable for the same reasons as the claims from which they depend.

### **CONCLUSION**

In view of the above amendments and remarks, it is believed that all claims that will be pending after entry of this Amendment, claims 1-18, 20-37, and 39-46, are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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